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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

In re:

GRABEEL FAMILY TRUST

Established October 30, 1985

MICHAEL L. NEILL, Removed Trustee

Case No.: PR 09 0001

TENTATIVE RULING ON
ATTORNEYS' FEES ISSUES

Petitioners seek an order that the former trustee pay their attorneys' fees which they incurred in their attempts to remove him and in their objections to his accountings. [Probate Code § 17211(b)] The request is denied. Petitioners have presented insufficient evidence to establish that the former trustee opposed their attempt to remove him or opposed their objections to his accountings in bad faith and without reasonable cause. (*Estate of Bonacoccorsi* (1999) 69 Cal.App.4th 462)

Petitioners also seek an order that the former trustee be required to reimburse the trust for former trustee's attorneys' fees already paid by the trust and that all

1 further fees billed by former trustee's attorneys be paid by the former trustee. First,
2 the Court notes that the former trustee has already voluntarily reimbursed the trust
3 for significant monies concerning which the Court did not actually order a surcharge.
4 However, the Court also notes that such reimbursements constituted successful
5 litigation efforts by Petitioner on removal issues from January 2009 to June 30, 2009.
6 Petitioners complain that former trustee's lawyers have failed to apportion their time
7 between the accounting issues and the removal issues. The Court finds that the
8 December 21, 2009 declarations of attorneys Clark and O'Brien and the January 19,
9 2010 declaration by attorney Clark are attempts to apportion the work, but that the
10 declarations incorrectly estimate the extent to which former trustee's attorneys
11 expended time to defend against trustee's removal. The trust has already paid the
12 fees which were incurred in that time frame and trustee must reimburse the trust for
13 fees paid for unsuccessful defense of the Petition to Remove Trustee. (*Estate of*
14 *Cassity* (1980) 106 Cal.App.3rd, 569; *Estate of Gump* (1991) 1 Cal.App.4th 582, 604)
15 Further, while the Court never actually reached a ruling that former trustee was
16 charging unauthorized fees for the LaCanada management, the Court finds that
17 Petitioners were successful on the allegation that he was double-dipping. That was
18 the clear meaning of the order that he no longer collect the fee. Petitioners also were
19 successful for purposes of a fee award in that they achieved a repayment of some
20 property sales commissions. In addition, the Court ruled that portions of the already
21 earned trustee fees were unauthorized because the trustee's percentage basis was
22 unreasonable. Petitioners were successful for purposes of a fee award as to defense
23 of removal on their allegation that trustee had charged excessive fees. Last, the
24 Petitioners established that the former trustee was prepared to take a 1% fee for
25 involvement in a joint venture development on what was partially trust property
26 which the Court ruled would result in an exorbitant fee amount. Thus, the Court
27 finds that the cost of the defense to these allegations would properly allocate to the
28 cost of the unsuccessful defense of the removal of the trustee even though the Court

1 admittedly did not actually remove the trustee until later. The Court is simply unable
2 to discern exactly when work was done on these issues. Former trustee has argued
3 that the Court did not find grounds for removal. However, the Court finds that the
4 need to defend the removal encompassed the issues just described and that it was
5 under-allocated by former trustee's counsel. Former trustee argues in the April 14,
6 2010 Further Analysis that, in essence, Mr. O'Brien's time was split fifty-fifty
7 between removal and accounting issues and that half of the removal defenses were
8 successful. The Court rejects that allocation. The evidence received by this Court
9 clearly established the need to order or accept reimbursement by the trustee of
10 certain fees and commissions. Trustee concedes that he was unsuccessful on the
11 Tognazzini issues, trustee fees issues, and ranch manager issues, which comprised
12 significant past monetary concerns and significant concerns with what would be
13 exorbitant trustee fees going forward. Indeed, the Court ordered significant changes
14 in the fee calculation and also ordered that double dipping with trustee fees and
15 manager fees cease. The Court also ordered that his proposed one percent
16 development fee involving trust property would be inappropriate. The Court
17 calculates the unsuccessful defenses to the significant allegations in the Petition to
18 Remove seventy-five percent. The Court finds that while there were numerous
19 allegations in the Petition to Remove, at the significant issues were as described
20 above and these issues constituted the main focus of the Petition.

21 The Court has not been provided with a clear fee analysis by former trustee,
22 and the Court has thus been unable to determine the exact percentage of Mr.
23 O'Brien's time or Ms. Clark's time which was spent on removal issues. However,
24 former trustee concedes that Ms. Clarke and Mr. O'Brien spent approximately one-
25 half of their time on removal issues and that one half of the hard costs were for
26 removal issues. Petitioners argue that removal issues comprise sixty percent of the
27 attorney time. The Court in its discretion splits the difference and finds that attorney
28 time from January 2009 to June 30, 2009, was split fifty five percent on removal and

1 forty five percent on accounting issues. Thus, the Court orders that former trustee
2 reimburse the trust for that portion of the \$92,000 paid as attorneys' fees which is
3 seventy five percent of fifty-five percent or \$37,950 plus \$2427 for hard costs for a
4 total of \$40,407. The Court rejects Petitioner's contention that former trustee should
5 bear all the costs of defense of removal. (*Ibid*)

6 The Court finds that the former trustee has established that, from July 1, 2009
7 through December 31, 2009 he has earned \$19,626.75 in trustee fees based upon the
8 authorized fee schedule.

9 Former trustee is allowed an offset of \$19,626.75. The Court orders former
10 trustee to pay to the trust \$20,781. The trust shall pay former trustee's attorneys
11 \$12,352 for the court-ordered Canada accounting. The Court rejects Petitioner's
12 request that the attorneys' fee for the accounting be allocated as there is no logical
13 way to determine whether a portion of such an accounting could be provided only for
14 trust property. The Court hereby vacates its previous ruling on attorneys' fees
15 because it was incorrect.

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18 DATED: April 28, 2010

19 BARRY T. LABARBERA
20 Judge of the Superior Court

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